



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Advance Gear & Machine Corp.--Reconsideration

File: B-228002.2

Date: February 3, 1988

DIGEST

Agency determination to employ progress payments, in response to request by selected offeror, did not amount to change in agency requirements necessitating discussions or material deviation from basis of competition where accepted offer was not conditioned upon receipt of progress payments and otherwise complied with terms of solicitation, and awardee was not afforded opportunity to alter terms of its offer.

DECISION

Advance Gear & Machine Corp. requests reconsideration of our decision Advance Gear & Machine Corp., B-228002, Nov. 25, 1987, 87-2 CPD ¶ , in which we denied and dismissed protest bases raised by Advance concerning the Air Force's award of a contract to Bemsco, Inc. Advance contends the decision was in error because it omitted consideration of an issue raised by the firm. We deny the reconsideration request.

The contract was awarded on the basis of initial proposals submitted in response to request for proposals (RFP) No. F41608-87-R-2628, for the acquisition of hydraulic pump housings used in the T-38A and F-5A/B aircraft. Although the RFP was issued to approved sources, it allowed unapproved sources to submit information with their proposals sufficient to permit approval, and stated that such offers might be considered for award. The RFP contained two distinct delivery schedules, with and without first article testing, which differed substantially.

Advance and Bemsco were the only offerors. Bemsco provided information with its proposal seeking approval as a source and offered to satisfy the delivery schedule applicable to first article testing. Advance offered both with and without first article testing, but proposed delivery schedules which differed from the specified delivery terms

of either alternative. Both Bemsco and Advance requested progress payments. Bemsco was the lower priced offeror. The Air Force ultimately approved Bemsco as a source and awarded the contract to Bemsco.

Advance contended that the information Bemsco supplied in trying to obtain approval amounted to the conduct of discussions by the Air Force with only one offeror; contested the Air Force's affirmative determination of Bemsco's responsibility; and argued that the shorter delivery schedule stipulated in the RFP for vendors for which first article testing could be waived exceeded the Air Force's minimum needs and unduly restricted the competition. We denied Advance's first basis for protest and dismissed the latter two.

Advance does not request reconsideration of the questions addressed in our prior decision, but contends that we erred by not considering another issue that Advance raised. Advance also contended that the Air Force relaxed its requirements in awarding the contract to Bemsco by agreeing to provide Bemsco with progress payments, without affording Advance an opportunity to make an offer on a similar basis. Advance argued that this was analogous to the situation discussed in E. C. Campbell, Inc., B-222197, June 19, 1986, 86-1 CPD ¶ 565, in which we sustained a protest of the acceptance of an offer that included delivery and payment terms that did not comply with the solicitation. Advance contended that its own offer would have been lower in price had it been sure it could receive progress payments, and that the Air Force's action was a material change in the solicitation groundrules that necessitated another round of offers.

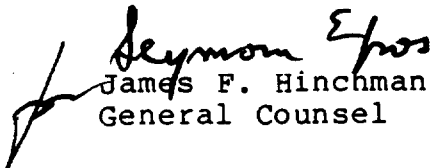
The situation in E. C. Campbell is distinguishable from the present matter. In that case, the agency accepted an offer premised on delivery, acceptance and payment for components in response to a solicitation that contemplated acquisition of a system. We found that the offer changed the vendor's obligation to provide a completed system into an obligation to provide discrete components, and we found that the agency's acceptance of the noncompliant terms amounted to a relaxation of the agency's requirements and a material deviation from the basis on which the competition was conducted that was prejudicial to other offerors.

There was no such change in the agency's requirements or the basis of the competition in the present matter. Although both offerors requested progress payments, neither offer was conditioned upon the receipt of progress payments (and, unlike Advance's offer, Bemsco's complied with the RFP's delivery terms). Moreover, as is evident from the

conclusion in our prior decision that the Air Force had not conducted discussions with Bemsco--a conclusion we considered dispositive of the present question--Bemsco was not provided an opportunity to change its prices or otherwise alter its obligations in response to the grant of progress payments.

In short, the RFP established the agency's quality, quantity and delivery requirements; the offerors competed on the same basis; and Bemsco's price offer was not altered in any way by the agency's grant of progress payments. We thus find no change in the procurement that would have required the opening of discussions with Advance.

The request for reconsideration is denied.


James F. Hinchman
General Counsel